

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOSEPH A. LEE,
CDCR #AU-9231,

Plaintiff,

vs.

SAN DIEGO COUNTY JAIL, et al.,

Defendants.

Civil No. 15-cv-1236-LAB-NLS

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY
FILING FEE REQUIRED
BY 28 U.S.C. § 1914(a) AND/OR
FAILING TO MOVE TO
PROCEED IN FORMA PAUPERIS
PURSUANT TO
28 U.S.C. § 1915(a)**

Joseph A. Lee (“Plaintiff”), currently incarcerated at the California Rehabilitation Center located in Norco, California, and proceeding pro se, initially filed a civil rights complaint (“Compl.”) pursuant to 42 U.S.C. § 1983 (ECF No. 1) in the Eastern District of California.

On June 2, 2015, United States Magistrate Judge Kendall J. Newman determined that the claims giving rise to this action occurred while Plaintiff was housed at the San Diego County Jail. (ECF No. 3.) Therefore, the matter was transferred to the Southern District of California.

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1 **I. Failure to Pay Filing Fee or Request IFP Status**

2 All parties instituting any civil action, suit or proceeding in a district court of the
 3 United States, except an application for writ of habeas corpus, must pay a filing fee of
 4 \$400. *See* 28 U.S.C. § 1914(a).¹ An action may proceed despite a plaintiff's failure to
 5 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
 6 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*
 7 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if the Plaintiff is a prisoner, and
 8 even if he is granted leave to commence his suit IFP, he remains obligated to pay the
 9 entire filing fee in "increments," *see Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir.
 10 2015), regardless of whether his case is ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1)
 11 & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

12 Plaintiff has not prepaid the \$400 in filing and administrative fees required to
 13 commence this civil action, nor has he submitted a properly supported Motion to Proceed
 14 IFP pursuant to 28 U.S.C. § 1915(a). Therefore, his case cannot yet proceed. *See* 28
 15 U.S.C. § 1914(a); *Andrews*, 493 F.3d at 1051.

16 **II. Conclusion and Order**

17 For the reasons set forth above, the Court hereby:

18 (1) **DISMISSES** this action sua sponte without prejudice for failure to pay the
 19 \$400 civil filing and administrative fee or to submit a Motion to Proceed IFP pursuant to
 20 28 U.S.C. §§ 1914(a) and 1915(a); and

21 (2) **GRANTS** Plaintiff **forty-five (45)** days leave from the date this Order is
 22 filed to: (a) prepay the entire \$400 civil filing and administrative fee in full; **or**
 23 (b) complete and file a Motion to Proceed IFP which includes a certified copy of his trust
 24 account statement for the 6-month period preceding the filing of his Complaint. *See* 28
 25 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b).

27 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional
 28 administrative fee of \$50. *See* 28 U.S.C. § 1914(a) (Judicial Conference Schedule of
 Fees, District Court Misc. Fee Schedule, § 14 (eff. Dec. 1, 2014)). The additional \$50
 administrative fee does not apply to persons granted leave to proceed IFP. *Id.*

1 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff
2 with this Court's approved form "Motion and Declaration in Support of Motion to
3 Proceed *In Forma Pauperis*." If Plaintiff fails to either prepay the \$400 civil filing fee or
4 complete and submit the enclosed Motion to Proceed IFP within 45 days, this action will
5 remain dismissed without prejudice based on Plaintiff's failure to satisfy 28 U.S.C.
6 § 1914(a)'s fee requirements and without further Order of the Court.

7 **IT IS SO ORDERED.**

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9 DATED: June 8, 2015

10 Larry A. Burns

11 **HONORABLE LARRY ALAN BURNS**
12 United States District Judge

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